IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.MC.No. 2720 of 2004

CC.1042/1998 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONERS/ACCUSED NO.1 TO 4:

1. RAJ KUMAR, AGED 52, (A1) RAJ BHAVAN, PEROOR, KOLLAM.

2. BHADRAN, AGED 50(A2), KULATHOOR, PUTHENVEEDU, PEROOR, KOLLAM DISTRICT.

3. SHANTHAVALLI, AGED 46, W/O. RAJ KUMAR, RAJ BHAVAN, PEROOR, KOLLAM DISTRICT.

4. OMANA, AGED 42 , W/O. BHADRAN, KULATHOOR, PUTHEN VEEDU, PEROOR, KOLLAM DISTRICT.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN
SRI.PRAVEEN K. JOY

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SUMATHI W/O. DAMODARAN, ASHAM, VARAVA VILASAM, MUNDAIKAL, KOLLAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 2720 of 2004

ORDER

In this Crl.M.C., filed on 13.10.2004, notice to the second respondent, the defacto complainant, is not yet served. Petitioners are Accused Nos.1 to 4 in Annexure A1 protest complaint filed by the second respondent, complaining of commission by the petitioners of offences punishable under Sections 379, 445 and 451 IPC read with Section 34 thereof, consequent on Annexure A2 refer report having been filed by the police in Crime No.92/96 of Kilikolloor Police Station.

2. The prayer in this Crl.M.C. is to quash Annexure A5 order passed by the learned Magistrate on C.M.P.No.1223/03 in C.C.No.1042/98 on the file of the Judicial First Class Magistrate's Court-I, Kollam. It is submitted by the counsel for the petitioners that witnesses cited by the petitioners in Annexure A4 witness list are very important witnesses to establish the defence and that

rejection of the petition filed by the petitioners under Section 311 Cr.P.C. refusing to examine those witnesses has caused prejudice to the petitioners. Annexure A5 order of the learned Magistrate is as follows:

> "The grounds mentioned in the petition is not tenable and he has availed lot of opportunity to adduce evidence. Therefore, the petition is dismissed."

It is not evidenced as to how many opportunities were afforded to the petitioners to adduce evidence, especially when Annexure A5 order refers to the petitioners having availed of a lot of opportunities. Copy of the proceedings paper in the case or copy of C.M.P.No.1223/03,on which, Annexure A5 order was passed, is not produced. This Court is disabled to appreciate the legality and propriety of Annexure A5 order in the absence of furnishing sufficient materials to consider whether

rejection of the petition filed under Section 311 Cr.P.C. is justified or not. There is no prayer also in this Crl.M.C. to allow C.M.P.No. 1223/03, apart from the prayer to quash Annexure A5 order. I am convinced, in the circumstances, that there is no merit in this Crl.M.C. and that the attempt of the petitioners is only to protract the disposal of C.C.No.1042/98 on the file of the Judicial First Class Magistrate's Court-I, Kollam.

In the result, this Crl.M.C. is devoid of merit and is dismissed.

10th August, 2007 (K.P.Balachandran, Judge)

tkv